STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
May 3, 2011

In the Matter of HOLMES, Minors.

No. 300650
Ingham Circuit Court
Family Division
LC No. 09-001471-NA
09-001472-NA

Before: O'CONNELL, P.J., and K. F. KELLY and RONAYNE KRAUSE, JJ.

PER CURIAM.

Respondent appeals as of right an order terminating his parental rights to the minor children at the initial dispositional hearing pursuant to MCL 712A.19b(3)(f), (g), and (j). We affirm.

The trial court may terminate parental rights at the initial dispositional hearing pursuant to MCR 3.977(E). *In re Utrera*, 281 Mich App 1, 16-17; 761 NW2d 253 (2008). The trial court must find that a preponderance of the evidence adduced at trial establishes grounds for the assumption of jurisdiction under MCL 712A.2(b), and clear and convincing legally admissible evidence establishes that one or more facts alleged in the petition are true and establish grounds for termination under MCL 712A.19b(3). *Id.* The court cannot terminate parental rights under § 19b(3) unless jurisdiction exists under § 2(b). *In re S R*, 229 Mich App 310, 314; 581 NW2d 291 (1998). The court acquires jurisdiction over the children, not the parents per se, and if it properly does so, it may enter orders as needed affecting any adult. *In re CR*, 250 Mich App 185, 202-203; 646 NW2d 506 (2002).

The petition in this matter pertained to *both* parents. By the time of the first termination, the mother had not had any contact whatsoever with the children since 2004 and had never done anything to help the children's guardian care for the children, despite apparently being "a close friend" to the guardian. It would have been better practice for the trial court to have cited which statutory basis it relied on for taking jurisdiction. But it is clear from its comments and its contemporaneous citation to MCL 712A.19b(3)(a)(ii) (desertion as a ground for termination) that it took jurisdiction over the children pursuant to MCL 712A.2(b)(1). Among other things, that

provision confers jurisdiction over a child "who is abandoned by his or her parents.[1]" After taking jurisdiction, the trial court terminated both parents' parental rights. Respondent father appealed, and this Court reversed and remanded.[2]

After remand, the trial court found that it had jurisdiction under MCL 712A.2(b)(5), which permits the court to take jurisdiction over a child who has been placed with a guardian and both of the following are established:

> (A) The parent, having the ability to support or assist in supporting the juvenile, has failed or neglected, without good cause, to provide regular and substantial support for the juvenile for 2 years or more before the filing of the petition or, if a support order has been entered, has failed to substantially comply with the order for 2 years or more before the filing of the petition.
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> (B) The parent, having the ability to visit, contact, or communicate with the juvenile, has regularly and substantially failed or neglected, without good cause, to do so for 2 years or more before the filing of the petition. [MCL 712A.2(b)(5).]

The trial court had no need to do so, having previously and properly taken jurisdiction over the children. Because the trial court properly had jurisdiction over the children, it had the power to enter an order terminating respondent's parental rights. In the prior appeal, this Court found that the trial court erroneously terminated respondent father's parental rights; this Court did not find that the trial court lacked the jurisdiction to do so or that it improperly terminated the mother's parental rights.

We briefly observe that had the trial court *not* previously taken jurisdiction over the children, doing so on the basis of MCL 712A.2(b)(5) would have been improper under the circumstances. Although respondent had been incarcerated for more than ten years and thus was not a member of the workforce, "the statute does not contain an 'incarcerated parent' exception" and it applies to an incarcerated parent who still retains the ability to comply with the support requirement. *In re Caldwell*, 228 Mich App 116, 120-121; 576 NW2d 724 (1998). Therefore, it must have been shown that respondent had the ability to support or assist in supporting the children. However, the evidence was that respondent did not have the ability to earn any income while in prison and the trial court found that respondent did not have the ability to pay support.

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[1] Strictly speaking, only the mother "abandoned" the children, but because there is no indication in the statute that the Legislature intended to require both parents to have abandoned a child, the plural usage here may refer to a single parent, as well. See MCL 8.3b. This does not, of course, mean a trial court may necessarily *terminate* one parent's rights because of the acts or omissions of the other.

[2] *In re Holmes Minors*, unpublished opinion per curiam of the Court of Appeals, Docket No. 295427 (decided June 17, 2010).

Therefore, the trial court erred in finding that § 2(b)(5)(A) was proven by a preponderance of the evidence, so it could not have taken jurisdiction on that basis. *In re S R*, 229 Mich App at 314. Because, as discussed, the trial court already had proper jurisdiction, this error is harmless.

The trial court already had jurisdiction over the children. Consequently, whether the trial court misinterpreted or misapplied MCL 712A.2(b)(5) on remand in this matter is irrelevant. Furthermore, the trial court terminated respondent's parental rights pursuant to MCL 712A.19b(3)(f), (g), and (j), but respondent challenges only the trial court's findings regarding § (3)(f). Because establishment of only one statutory ground is necessary, erroneous termination on one ground is harmless if another ground was also properly established. *In re Powers Minors*, 244 Mich App 111, 118; 624 NW2d 472 (2000). Even if we were to presume that the trial court erred in terminating respondent's parental rights pursuant to § (3)(f), respondent's failure to challenge the other bases for doing so constitutes abandonment, and so we assume those other bases were proper. See *In re JS and SM*, 231 Mich App 92, 98-99; 585 NW2d 326 (1998), overruled in part on other grounds *In re Trejo*, 462 Mich 341, 353; 612 NW2d 407 (2000). Therefore, termination of respondent's rights was proper.

Affirmed.

/s/ Peter D. O'Connell
/s/ Kristen Frank Kelly
/s/ Amy Ronayne Krause